

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR288
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JAMES E. MITE,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR"). No objections have been filed to the PSR. See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement recommends under Federal Rule of Criminal Procedure 11(c)(1)(B) that the quantity of controlled substance attributable to the Defendant is at least 20 but less than 35 grams of cocaine base and, therefore, the base offense level is 26. The PSR attributes a higher drug quantity to the Defendant resulting in base offense level 28. This issue is moot in light of the Defendant's career offender status and, therefore, because the plea agreement was made under Rule 11(c)(1)(B) and neither party has objected, the Court's tentative findings are that the PSR's statement of the drug quantity is correct.

The Court notes that in ¶ 34, in the fourth line, "34" should be changed to "32."

IT IS ORDERED:

1. The parties are notified that my tentative findings are as follows:
 - a. in ¶ 34, "34" should be changed to "32";

b. otherwise, the PSR is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge